

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

|                 |                           |
|-----------------|---------------------------|
| In Re:          | § Case No. 22-33231-H1-13 |
|                 | §                         |
| Myrta I. Torres | §                         |
|                 | §                         |
| Debtor(s)       | § Chapter 13              |

**DEBTOR(S)' OBJECTION TO CLAIM NO(S). 3**  
**OF U.S. BANK TRUST NA**

**THIS IS AN OBJECTION TO YOUR CLAIM. THIS OBJECTION ASKS THE COURT TO DISALLOW THE CLAIM THAT YOU FILED IN THIS BANKRUPTCY CASE. IF YOU DO NOT FILE A RESPONSE WITHIN 30 DAYS AFTER THE OBJECTION WAS SERVED ON YOU, YOUR CLAIM MAY BE DISALLOWED WITHOUT A HEARING.**

**THERE WILL BE A HEARING ON THIS MATTER ON MARCH 21, 2023 AT 9:00 AM ON THE 4TH FLOOR, COURTROOM 404, UNITED STATES BANKRUPTCY COURT, 515 RUSK ST., HOUSTON, TEXAS 77002.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.**

**TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:**

COMES NOW Myrta I. Torres (the "Debtor(s)") and files this *Objection to Claim No(s). 3 of* U.S. Bank Trust NA and would show the Court the following:

1. Debtor(s) filed this Chapter 13 bankruptcy case on October 30, 2022.
2. On January 9, 2023, U.S. Bank Trust NA (the "Creditor") filed secured Proof of Claim No(s). 3 (the "Claim") in the amount of \$78,727.42 with arrears of \$9,953.90.
3. Debtor(s) objects to the Claim and requests that the Court disallow portions of the Claim because the debt made the basis of the Claim is unenforceable against the Debtor(s) or property of the Debtor(s) under any agreement or applicable law pursuant to 11 U.S.C. § 502(b)(1). Specifically, Debtor(s) objects to the Claim for the following reasons:

- a. The total amount of the prepetition arrears in the Claim is overstated because Debtor has not been given credit for all payments made.
  - b. The total amount of the prepetition arrears in the Claim are overstated because Debtor emerged from her previous bankruptcy, Case No. 15-34440, up to date with her payments. Her mortgage company filed a motion for relief from stay in her prior case, but Debtor was able to show that she was up to date with her payments. As a result, the motion for relief was withdrawn. After completion of her prior bankruptcy, the Debtor continued to make her payments and provided proof to the attorneys for the mortgage company that she was up to date. However, the Debtor continued to receive statements indicating that she owed arrears. Eventually, the mortgage company refused to accept payments from Debtor. Attempts were made to resolve the misapplication of payments with the attorneys for U.S. Bank, NA, Padgett Law Group, however, they failed to respond to requests for updates and ceased communications altogether.
  - c. The prepetition arrears may be overstated due to the disallowance of the claim filed in the previous case by one of the mortgage company's predecessors. An objection to the claim of Ditech was made on November 22, 2015 and the objection was sustained by order signed on December 21, 2015 [Docket No. 40] disallowing \$2,137.54.
  - d. Debtor believes that she owes \$4,431.40 because these payments were either returned or refused by U.S. Bank, N.A.
  - e. U.S. Bank, N.A.'s failure to properly credit the Debtor's account caused substantial injury to her in that she was forced to file this current bankruptcy case.
4. In support of such allegations, Debtor(s)' declaration is attached hereto as **Exhibit "A"**.

**WHEREFORE**, Debtor(s) requests that the Court disallow the Claim and grant Debtor(s) such other relief as is just.

Respectfully submitted,

**GUZMAN LAW FIRM**

*/s/ Eloise A. Guzman*

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*Attorneys for the Debtor(s)*

**CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing was served on the following on 02/14/2023 and the parties on the attached list, if any:

Debtor via U.S. Mail

Myrta I. Torres

2714 Magnolia Ct.

Stafford, TX 77477

Via ECF/CM

David G. Peake, Chapter 13 Trustee

U.S. Trustee

U.S. Bank Trust NA

c/o Rushmore Loan Management Services

PO Box 55004

Irvine, CA 92619-2708

Via ECF/CM

Ghidotti Berger, LLP

Attn: Chase Berger

9720 Coit Road, Suite 220-228

Plano, TX 75025

*Parties Requesting Notice:*

*Via ECF/CM*

Perdue, Brandon, Fielder, Collins & Mott, LLP

Attn: Melissa E. Valdez

123 North Loop West, Suite 600

Houston, TX 77008

*/s/ Eloise A. Guzman*

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Eloise A. Guzman